

# **Exhibit 5**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER  
(Fort Lauderdale Division)

MARCEL FASHION GROUP, INC.  
a Florida corporation,

Plaintiff,

v.

LUCKY BRAND DUNGAREES, INC.  
a Delaware corporation,  
FEDERATED DEPARTMENT STORES, INC.,  
a Delaware corporation, and  
LIZ CLAIBORNE, INC.,  
a Delaware corporation,

Defendants.

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**NIGHT BOX  
FILED**

**MAR 16 2003**

CLARENCE MADDOX  
CLERK, USDC / SDFL / ETL

**PRETRIAL STIPULATION**

Plaintiff Marcel Fashion Group, Inc. ("Marcel") and Defendants Lucky Brand Dungarees Inc. ("Lucky Brand"), Federated Department Stores, Inc. and Liz Claiborne, Inc. (collectively "Defendants") file this Pretrial Stipulation pursuant to the Court's Order of March 7, 2003.

**I. Short Concise Statement of the Facts**

**A. Plaintiff's Statement**

Marcel filed the instant action seeking relief for trademark infringement, reverse confusion, false designation of origin, false description or representation, and related unfair competition. Marcel also asserts claims under the common law for trademark infringement, and unfair competition, including permanent injunctive relief to protect its proprietary interests and its trademark rights, for monetary damages and for injury to business reputation under Florida Statute §495.151 (1999).

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Marcel owns the right to use in commerce the trademark "GET LUCKY" in the sale of clothing and apparel. Such use by Marcel began in 1985, and has been continuous since that time. Marcel has been selling clothing and apparel under the "GET LUCKY" trademark since at least as early as 1985, and has maintained Jackie Goldberg as an independent sales representative since 1986. Ms. Goldberg has sold substantial quantities of Marcel's goods under the "GET LUCKY" trademark continuously since 1986.

Marcel and Ms. Goldberg have exhibited the "GET LUCKY" brand at various trade shows throughout the United States, with each of several shows staged several times per year, since 1985, and has continuously exhibited at these, and other, industry trade shows. Marcel has spent considerable resources in establishing the "GET LUCKY" trademark as a source of highly distinctive, quality clothing and apparel in the United States, and have made substantial sales.

Consequently, the "GET LUCKY" trademark and Marcel's reputation have grown steadily and now are well-known throughout the United States as the source of origin for these goods. Marcel has continued to upgrade and expand its product line and Marcel enjoys the benefit of the goodwill associated with Marcel's use of the "GET LUCKY" trademark in the United States. .

In or around mid to late June 1999, Marcel discovered that Defendant Lucky Brand began advertising its product line through the use of bench advertisements throughout the city of Miami, Florida, and throughout the United States, and by placing advertisements in national publications. These advertisements prominently display Marcel's "GET LUCKY" mark.

Earlier, in or around December 1998, Marcel was contacted by counsel for Defendant Lucky Brand and threatened with a cease and desist letter. The letter, dated December 10, 1998, demanded that Marcel cease and desist its use of the "GET LUCKY" mark. Defendant Lucky Brand admitted that they use the "GET LUCKY" mark, and that Marcel's continued use of its own mark "if continued, may cause problems." Such use, it was alleged by Defendant Lucky Brand, was likely to cause confusion with Defendant Lucky Brand's very use of the identical mark on identical goods,

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clothing and apparel. Furthermore, Defendant Lucky Brand allegedly conceded that Marcel's use of the "GET LUCKY" mark was also likely to cause confusion with its "LUCKY BRAND" mark as well.

After receiving Defendant's cease and desist letter Marcel's owner, Ezra Mizrachi, contacted Gary Nelson, Esq., Lucky Brand's counsel who directed the cease and desist letter to Marcel, and informed Mr. Nelson that Marcel has continuously used the mark in commerce since 1985. Mr. Mizrachi was informed by Mr. Nelson that he would need a lawyer, and that Mr. Nelson would no longer discuss the matter with him. Mr. Mizrachi did not hear from Defendant Lucky Brand until Defendant Lucky Brand filed its Notice of Opposition in a proceeding before the Trademark Trial and Appeal Board in or around May 1999. Despite Lucky Brand's actual knowledge of Marcel's senior rights in the "GET LUCKY" mark, Lucky Brand continued using the "GET LUCKY" mark. ARGUMENT.

From 1985 until mid-1992, Marcel was the owner of U.S. Registration No. 1,377,345, which was issued in 1985. The federal registration was canceled in 1992 as a result of Marcel's failure to file a Section 8 affidavit.

Defendant Lucky Brand filed its Notice of Opposition in the United States Patent and Trademark Office despite actually having already contacted Marcel and after having been informed by Mr. Mizrachi that Marcel was the senior user.

Defendants have advertised in such national publications such as GQ, ESQUIRE, SEVENTEEN, ELLE, VANITY FAIR, IN STYLE, and WOMENS WEAR DAILY, while also selling to selling in major retailers. Furthermore, Defendant Lucky Brand's website, luckybrandjeans.com prominently featured Marcel's "GET LUCKY" mark, such that the "GET LUCKY" mark is displayed in parts of the website more prominently than Defendant's own "LUCKY BRAND" mark. Lucky Brand receives more than 2,000,000 hits per year on its website.

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Marcel has not authorized Defendants' various uses of its "GET LUCKY" trademark, and Marcel and Defendants are not associated, sponsored, affiliated, or connected.

Defendants have used the mark in Florida and in the United States and have displayed the mark on advertisements, graphic displays, bench advertisements, bus advertisements, in store displays, on awnings, on promotional items, clothing and apparel, the Internet, on their website, and on product packaging.

**B. Defendants' Statement**

This case involves claims made by Marcel for infringement of its unregistered clothing trademark "Get Lucky" (as well as related claims such as reverse confusion, false designation of origin and unfair competition) arising out of the sporadic use by Lucky Brand, from 1998 to October 2002, of the phrase "get lucky" as a tag line in different variations on various types of advertising, display and promotional materials. Marcel asserts equivalent claims against Claiborne relating to instances where the words "get lucky" appeared on certain advertisements for Claiborne's LUCKY YOU LUCKY BRAND fragrance line, sold under license from Lucky Brand.

None of the Defendants ever used "get lucky" as a trademark, brand name or source identifier, nor did they ever seek to register "get lucky" as a trade mark.

Despite Marcel's allegations of irreparable injury to its business and reputation, Marcel has provided no tangible evidence of injury. Marcel's sales actually increased through the main period of Lucky Brand's and Claiborne's use of the phrase "get lucky" as a tag line.

All of the depositions, interrogatories and document discovery taken by Lucky Brand have yielded no tangible evidence of (a) any form of damages, lost profits or lost business opportunities that have been suffered by Marcel as a result of Defendants' use of the phrase "get lucky," or (b) that anyone has been confused by Defendants' use of "get lucky" into believing either that Lucky Brand's products originate from or are sponsored or licensed by Marcel ("forward confusion") or that Marcel was attempting to trade off on Lucky Brand's reputation by using "Get Lucky" ("reverse confusion").

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**II. Basis of Federal Jurisdiction**

Marcel has asserted claims under the Federal Trademark Act, 15 U.S.C. § 1051, et. seq. (“Lanham Act”). This Court has original jurisdiction pursuant to 28 U.S.C. §§1331, 1338(a) and 1338(b).

**III. The Pleadings Raising the Issue**

- A. Complaint filed by Marcel against Lucky Brand and Federated Department Stores, Inc. in Case No. 01-7495-Civ-Dimitrouleas;
- B. Answers and Affirmative Defenses filed by Lucky Brand and Federated Departments Stores, Inc.;
- C. Complaint filed by Marcel against Liz Claiborne, Inc., in Case No. 02-21304-Civ-Moreno; and
- D. Answers and Affirmative Defenses filed by Liz Claiborne, Inc.
- E. On June 3, 2002, the above cases were consolidated into Case No. 01-7495-Civ-Dimitrouleas.

**IV. Undisposed Motions or Other Matters Requiring Action**

- A. Defendants’ Motion for Partial Summary Judgment on Marcel’s Claims for Monetary Recovery;
- B. Defendants’ Motion for Partial Summary Judgment on Marcel’s Claims for Liability Under a “Dominion and Control” Theory;
- C. Defendants’ Motion to Strike Declarations filed in Support of Plaintiff’s Response to Motions for Partial Summary Judgment; and
- D. Defendants’ Motion to Exclude Expert Testimony of Marcel’s Purported Expert Weston Anson.

**V. Concise Statement of Uncontested Facts which Require no Proof at Trial**

- 1. Plaintiff Marcel is a small company located in Miami which markets apparel products in the nature of t-shirts, shorts, short sets, pant sets, and the like. Marcel or its predecessor was founded in 1985 by Ezra Mizrachi (“Mizrachi”), its current president, and has used the trademark GET LUCKY as a label in clothing products sold in the United States.
- 2. Marcel has used “Get Lucky” for a number of years as a label in most of the garments it sells.

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3. The Get Lucky clothing line is not Marcel's only product line. A portion of the apparel manufactured by Marcel is sold to other manufacturers who then sell the apparel under their labels. Marcel also "private labels" garments, i.e. uses a customer's label or logo rather than a Get Lucky label.
4. Marcel does not market its products to department stores or mass retailers. Marcel focuses on a niche market comprised of casinos, hotels, hospitals, Indian reservations, theme parks, small speciality stores and catalogues.
5. At the time Lucky Brand began use of "get lucky" in 1998, Marcel's Get Lucky trademark was not registered or even the subject of an application to register. Marcel had owned a registration from Get Lucky but it was cancelled in 1992, for failure by Marcel to file an affidavit of continuing use of its mark.
6. Prices paid by Marcel's customers range from \$7.50 for items such as t-shirts up to \$60 for pants or short sets. The products are then sold to retail customers for \$15 to \$120.
7. Marcel's annual sales figures, which include "Get Lucky", private label and other apparel lines, have never exceeded a few million dollars.
8. Marcel does not market its products to the general public. It does not use print media or television, or other forms of advertising to consumers or the general public. Marcel does not promote its goods on the Internet. Marcel markets its products to customers exclusively through trade shows.
9. Marcel has never licensed its Get Lucky trademark to anyone, nor has anyone ever requested such license from Marcel.
10. Marcel has never sold any fragrances, cosmetics or toiletries, whether under "Get Lucky" or any other name.
11. In December 1998, after hearing of Marcel's use of "Get Lucky," Lucky Brand's attorney sent a cease and desist letter to Marcel. That letter detailed Lucky Brand's use of "get lucky". Neither Marcel nor anyone acting on its behalf ever responded in writing to that letter.
12. Marcel has no documents or any other records of anyone asking whether Marcel was associated with Lucky Brand.
13. Marcel has never received a letter from anyone who was under the impression that Marcel was Lucky Brand, nor any order for goods intended for Lucky Brand but misdirected to Marcel.
14. Marcel has never received any returns of garments that were intended for Lucky Brand, and knows of no instance where any of its garments were returned to Lucky Brand by mistake.

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15. Marcel has never received any packages intended for Lucky Brand and knows of no mail or packages intended for it that ever were misdirected to Lucky Brand.
16. Marcel claims there were instances of telephone inquiries or inquiries at trade shows by persons who believed that Marcel was associated with Lucky Brand.
17. Marcel's sales actually increased during the period of 1998 through 2000, the main period of time during which Lucky Brand used the "get lucky" designation in advertising and the like.
18. Defendant Lucky Brand, headquartered in Vernon, California, is a manufacturer and marketer of quality apparel and accessory products.
19. Defendant Claiborne is a large manufacturer of apparel, accessories and fragrance products. Claiborne owns 85% of the shares of Lucky Brand, which it acquired in June 1999.
20. Defendant Federated Department Stores, Inc. owns and operates a number of retail department store chains. Certain of the Federated stores carry Lucky Brand's apparel products.
21. Lucky Brand was founded about twelve years ago and has become a successful manufacturer and marketer of apparel products, particularly denim jeans, shorts, t-shirts, shirts, jackets, sweaters and other items of clothing for women and men. Since it was founded, Lucky Brand has sold hundreds of millions of dollars worth of its apparel and accessory products throughout the United States.
22. Lucky Brand's products are sold through department stores such as Nordstroms, Neiman Marcus, Dillards, Bloomingdale's and Macy's, through specialty chain stores, through its own Lucky Brand retail stores and through its Internet website. Lucky Brand does not sell to hotels, hospitals, Indian reservations or theme parks. The retail price range of Lucky Brand's apparel products is from about \$40 to about \$400.
23. In early 1998 Lucky Brand initiated a company website on the Internet. On that website the words "get lucky" appeared in the context of phrases such as "get lucky near you" and "Where to Get Lucky." Lucky Brand's website receives over 2,000,000 hits per year.
24. Later in 1998, the phrase "Get Lucky" appeared in one or more cooperative advertisements run by customers of Lucky Brand in newspapers, such as a Bloomingdale's ad that stated "Get lucky....Only at Bloomingdale's.
25. In late 1998 or early 1999, Lucky Brand began to place outdoor advertisements such as signs on cable cars, buses and taxis, as well as bench advertisements which featured in large prominent letters Lucky Brand's famous trademarks such as LUCKY BRAND, but also in some instances included the words "get lucky."



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26. In or about May 2000, Lucky Brand began to run print advertisements and distribute promotional materials which included the phrase "get lucky." This phrase sometimes appeared in the advertisements and promotions in conjunction with a smiling Buddha figure.
27. Lucky Brand has ceased placing print advertisements and web sites which included "get lucky" in any form. The distribution of promotional materials bearing "get lucky" has ceased as well. Lucky Brand has also ceased using "get lucky" on its web site. Lucky Brand has not had any drop-off in sales of its products since it stopped producing advertising and promotional materials bearing "get lucky." In fact, sales have increased since that time.
28. In 2000 and 2001, Lucky Brand sold a small quantity of promotional t-shirts having artistic materials or logos screened thereon which included, in the midst of "busy" designs and other text, phrases such as "Get Lucky Now," "Look Your Best Get Lucky Las Vegas" and "get Lucky at The Buckle".
29. During 2001 and part of 2002, Lucky Brand licensed the sale of men's underwear products to an underwear manufacturer to be sold under the trademark LUCKY BRAND. The packages of these underwear products bore the trademark LUCKY BRAND in more than one place in large, prominent letters and also bore various other tag lines and copy provided by Lucky Brand, including the words "get lucky" which appeared on the side panels of the packages.
30. The total aggregate sales of the promotional t-shirts bearing slogans and designs that included "get lucky" in any form and the underwear which included the phrase "get lucky" on the side panels of its packaging were no more than about \$400,000. This represents a small fraction of one percent of the overall sales made by Lucky Brand during the same time period, the remainder of which did not bear "get lucky" at all.
31. In mid-2000, Claiborne began to sell a line of LUCKY YOU LUCKY BRAND FRAGRANCES under license from Lucky Brand.
32. One theme used by Claiborne in print advertising for the LUCKY YOU LUCKY BRAND fragrances was a series of sexually suggestive scenes featuring a man and a woman. On some, but not all, of the advertisements and promotional materials embodying this theme the phrase "get lucky" appeared.
33. "Get lucky" never appeared on any Claiborne product.
34. Even on Claiborne's advertising materials that did include "get lucky," the trademark LUCKY YOU LUCKY BRAND appeared in large dominant lettering as the sole product name.

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**VI. Issues of Fact which Remain to be Litigated**

**Plaintiff's position:**

**A. Liability**

1. Plaintiff's damages, if any.
2. Whether Defendants' acts have resulted in a likelihood of reverse confusion.
3. Whether Defendants knowingly saturated the market with their use of the "GET LUCKY" mark after becoming aware of Plaintiff's senior use of the identical mark.
4. Whether Defendants were unjustly enriched by using the phrase "GET LUCKY."

**Defendants' position:**

**A. Liability**

1. Whether Marcel has established that the use by Lucky Brand or by Liz Claiborne of the phrase "get lucky" as a tag line or slogan caused confusion or was likely to cause confusion of an appreciable number of consumers or members of the trade and led them to believe that goods sold by Defendants originated from or were sponsored or licensed by Marcel.
2. Whether Marcel has established that the use by Lucky Brand or by Liz Claiborne of the phrase "get lucky" as a tag line or slogan caused "reverse confusion" of an appreciable number of consumers or the trade, i.e., led them to believe that Marcel's use of the trademark Get Lucky was an attempt by Marcel to "knock off" Lucky Brand or trade on its good will.
3. Whether Marcel's Get Lucky trademark enjoyed any nationwide recognition at the time Lucky Brand began use of "get lucky" in 1998.
4. Whether for almost three years, from its receipt of Lucky Brand's cease and desist letter until filing this lawsuit, Marcel ever advised Lucky Brand that it objected to Lucky Brand's use of "get lucky," that the use of that phrase by Lucky Brand was harming Marcel or its business in any way or that Marcel wanted Lucky Brand to stop using "get lucky".
5. Whether Lucky Brand ever used "get lucky" as a label, brand identifier or line name for any of its products or ever filed a trademark application for registration of "get lucky" or any phrase incorporating those words.

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**B. Damages Issues**

If liability is established:

1. Whether Lucky Brand's or Liz Claiborne's advertising use of "get lucky" has harmed Marcel's reputation, damaged Marcel's goodwill, diverted sales from Marcel or diminished Marcel's sales.
2. Whether Marcel has established that it sustained any actual damage as a result of Defendants' use of "get lucky."
3. Whether Marcel has established the amount of actual damage it sustained.
4. Whether Marcel used reasonable diligence in mitigating its damages.
5. Whether Marcel has established that Defendants used Marcel's trademark with an intent to confuse or deceive.
6. Whether Marcel has established that Defendants palmed off or attempted to palm off their goods as Marcel's.
7. Whether Marcel has established that Defendants' profits increased as a result of their use of the tag line "get lucky."
8. Whether Marcel delayed with no justification in asserting an objection to Lucky Brand's use of "get lucky," and whether Lucky Brand was prejudiced by that delay.
9. Whether Defendants' conduct was sufficiently "exceptional" under 15 U.S.C. §1117(a) to warrant an award of attorneys fees against them.
9. Whether Plaintiff is entitled to a reasonable royalty, and the amount.
10. Whether Plaintiff is entitled to an award for corrective advertising, and the amount.

**VII. Statement of Issues of Law on which There is Agreement**

**Plaintiff's position:** None

**Defendants' position:** None

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**VIII. Statement of Issues of Law to be Determined by the Court**

**A. Plaintiff's position:**

1. Whether Defendants acts constitute reverse confusion.
2. Whether Defendants acts were wilful.
3. Whether Plaintiff is entitled to an award for damages, including corrective advertising and royalties, and the amount.

**B. Defendants' position:**

1. Whether Marcel has met its evidentiary burden of establishing a *prima facie* case on its claims.
2. Assuming that Marcel has established a *prima facie* case, whether Marcel has produced evidence sufficient to permit a reasonable jury to conclude that Defendants' actions harmed Marcel's reputation, damaged Marcel's goodwill, have diverted sales from Marcel, or diminished Marcel's sales.
3. Assuming that Marcel has established a *prima facie* case, whether Marcel has produced evidence sufficient to permit a reasonable jury to conclude that the Defendants have profited unjustly from their use of "get lucky."
4. Whether Defendant Liz Claiborne is liable for acts of Defendant Lucky Brand.
5. Whether Marcel is entitled to recover profits or other damages.
6. Whether Marcel is entitled to an award for corrective advertising.
7. Whether either party is entitled to recover reasonable attorneys' fees.

**IX. Exhibit List**

Marcel's Exhibit List is attached as Exhibit A.

Marcel did not provide its Exhibit List in proper form until late April 20, 2003. As a result, Defendants have not had adequate opportunity to review the Exhibit List and provide objections. Defendants will submit their objections, if any, to exhibits identified by Marcel no later than April 25, 2003.

Defendants' Exhibit List is attached as Exhibit B.

**X. Witness List**

Marcel's Witness List is attached as Exhibit C.

Defendants' Witness List is attached as Exhibit D.

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**XI. Estimated Trial Time**

Marcel estimates the trial will take 5 days.

Defendants estimate the trial will take between 4 and 6 days.

**XII. Estimate of Attorney's Fees**

**Plaintiff's position:**

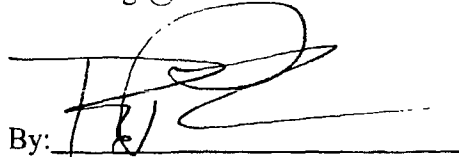
Attorney's fees may be awarded upon the finding that this is an exceptional case. Plaintiff is not yet able to estimate the amount of fees to which it may be entitled.

**Defendants' position:**


At this juncture, Defendants are unable to estimate the amount of fees to which any of the parties in this action might be entitled.

Respectfully submitted,

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Dated: April 21, 2003

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**EXHIBIT A**

**Marcel's Exhibit List**

AO 187 (Rev. 7/87) Exhibit and Witness List

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(Fort Lauderdale Division)**

**CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER**

MARCEL FASHION GROUP, INC.  
a Florida corporation,

Plaintiff,

v.

LUCKY BRAND DUNGAREES, INC.  
a Delaware corporation,  
FEDERATED DEPARTMENT STORES, INC.,  
a Delaware corporation, and  
LIZ CLAIBORNE, INC.,  
a Delaware corporation.

Defendants

**PROPOSED EXHIBITS**

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
TRIAL DATE(S)					COURT REPORTER	COURTROOM DEPUTY
PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
1					LB 0001- Cease and desist letter from Christie Parker & Hale dated 12/10/98	
2					LB 0003-06- Notice of Opposition	
3					P 0007, P 0011- US Trademark Reg. No. 1,377,345- "GET LUCKY"	
4					P0012-13 Florida Trademark Reg Nos. 2892, 2893	

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size

PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES
5					P 0016, 0068-71- Copies of Marcel's labels
6					P 0032-33- Copy of Marcel's Fall 2001 catalog
7					Letter from Donna Skinner dated 10/21/01 re attendance of Marcel at SAE trade shows since 1985
8					Composite of trade show catalogs for shows attended by Marcel since 1985
9					P 1290- Lucky Brand fragrance ad
10					Bloomingdales ad using GET LUCKY
11					Copy of Lucky Brand's website
12					Buckle website offering GET LUCKY NOW t-shirt
13					LB 0041, 0445, 431-2, 0069-74, 0475-477, 560-564, Bench ads
14					Composite of various ads run by Lucky Brand containing GET LUCKY
15					LB 0498- Bus ads with GET LUCKY
16					LB 0494- Lucky Brand store awning photo using GET LUCKY
17					LB 0495-97- Store front signage using GET LUCKY
18					LB 0306-7- Promotional mailing materials using GET LUCKY
19					Composite of magazine ads for Lucky Brand using GET LUCKY
20					Composite P 0081-122- Invoices for Marcel purchase of GET LUCKY labels
21					Composite P 123-1289, 1642-1953- Invoices from Marcel to customers
22					Composite P 2107-2328- Bank records of Marcel deposits
23					Assignment dated 7/3/95

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size



PLF. NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES
24					Composite Exhibit 10 from Mizrachi depositions
25					Composite Exhibit 11 from Mizrachi deposition
26					Womens Wear Daily article dated 8/28/00
27					Composite of various promotional items used by Lucky Brand containing GET LUCKY LB 0001-3, 0039, 0044, 0051-61, 0066-68, 0111-0118, 0278, 0487, 0517, 0538-552, 0568-69, 0615-17, 0107-118, 487
28					LB 0583-90, - GET LUCKY Sweepstakes
29					LB 0614 Invoice from Simpson Assoc. dated 12/26/00
30					LB 0054- Lucky Brand ad
31					LB 0020- April 2001 ad-Revolution
32					Composite Lucky Brand ads - LB 0080A, 107-8, 110-111, 246-251, 258-9, 260, 263, 315, 613
33					LB 0338-347- Lucky Brand website underwear, fragrances
34					Lucky Brand website- LB 0358-361
35					LB 0580- Lucky Brand Banner
36					Composite LB 1341-1342- Lucky Brand underwear package
37					LB 0063-65- Lucky Brand promotional materials
38					Lucky Brand ads- LB 0037, 221, 227, 578, 592, 1294
39					Marcel tax returns from 1998-2001
40					Composite Exhibit 2 from Karen Schneider deposition, advertising budget reports
41					Composite Exhibit from Karen Schneider deposition LB 595-96, 0077, 576-77, 375-79, 385-89, 228-45, 252-53, 510-12, 478-83, 464-74, 448-61, 413, 0078-79, 272-277, 593-94, 600-02, 566, 574, 0038-40, 494
42					Exhibit 20 from Karen Schneider Deposition
43					LB 597-98- Lucky Brand bags

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size

PLF NO	DEF NO	DATE OFFERED	MARKED	AD MI TT ED	DESCRIPTION OF EXHIBITS* AND WITNESSES
44					LB 103, 305-309- Lucky Brand ads
45					LB 1343-1430-Lunada License
46					LB 1431-1504- Briefly Stated License
47					Expert Report- Wes Anson
48					Expert Report- Gregory Battersby
49					Expert Report- Robin Lewis
50					Photographs of Aventura Store
51					Article form DNR dated 3/31/99
52					Article fro LA Times dated 5/26/98
53					Article from WWD West dated 10/2/02
54					Composite Media Summary Budget from Liz Claiborne LIZ 0001-0007
55					LIZ 0008-0053- ads containing GET LUCKY for fragrances
56					LIZ 00065- Script from fragrance commercial
57					LIZ 00066- Avrett Free & Ginsberg ad
58					LIZ 00068- Gross sales fragrances
59					LIZ 00069-76- Marketsource
60					LIZ 000079-81- Barney's ad
61					LB 0428, 487-Invoice from emap-peterson for GET LUCKY for FHM- Description GET LUCKY
62					LB 0645-47- Invoice for GET LUCKY on products

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size

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**EXHIBIT B**

**Defendants' Trial Exhibit List**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(Fort Lauderdale Division)**

**CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER**

MARCEL FASHION GROUP, INC.  
a Florida corporation,

Plaintiff,

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LUCKY BRAND DUNGAREES, INC.  
a Delaware corporation,  
FEDERATED DEPARTMENT STORES, INC.,  
a Delaware corporation, and  
LIZ CLAIBORNE, INC.,  
a Delaware corporation,

Defendants.

**LIST OF DEFENDANTS' PROPOSED TRIAL EXHIBITS**

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
TRIAL DATE(S)					COURT REPORTER	COURTROOM DEPUTY
PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*	
	1				LB0001-0002 - Pocket Folder from American Denim Standard	
	2				LB0003-0004 - Lucky Brand Paper Shopping Bag	
	3				LB0005 - Lucky Brand Underwear Advertisement in 5/4/01 DNR	
	4				LB0063 - American Denim Standard Grand Opening Poster	

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**LIST OF DEFENDANTS' PROPOSED TRIAL EXHIBITS**

PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*
	5				LB0065 - Lucky Brand Magazine Advertisement
	6				LB0066 - Cover from Lucky Brand Kid's Spring 2002
	7				LB0067 - Cover from Lucky Brand Men's Spring 2002
	8				LB0253 - Cover from Lucky Brand Women's Spring 2002
	9				LB0073 - Lucky Brand Bus Bench Advertisement
	10				LB0075 - Lucky Brand Promotional Magazine
	11				LB0107 - Lucky Brand Postcard
	12				LB0109-110 - Lucky Brand Free T-Shirt Coupon
	13				LB0113 - Lucky Brand Flip Notebook
	14				LB0256-57 - Lucky Brand Advertisement in Willow Bend Direct Mail Catalog
	15				LB0258 - Lucky Brand Advertisement in Japanese Tourist Guide
	16				LB0260 - Lucky Brand Advertisement in Paper City Magazine
	17				LB0278 - Lucky Brand Buddha Poster
	18				LB0279-80 - Lucky Brand Advertisement in Woodfield Shopping Center Commemorative Booklet
	19				LB0319 - Lucky Brand Magazine Advertisement
	20				LB1341 - Lucky Brand Boxers Package
	21				LB1342 - Lucky Brand T-Shirt Package
	22				LB1505 - Lucky Brand Memorandum dated 10/16/02
	23				Pair of Lucky Brand Dungarees
	24				Lucky Brand Long-Sleeve Shirt
	25				LB1617 - Lucky Brand Women's Underwear Package (Pink)

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size

**LIST OF DEFENDANTS' PROPOSED TRIAL EXHIBITS**

PLF NO.	DEF NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*
	26				LB1618 - Lucky Brand Men's Underwear Package (Grey)
	27				LB1619- Lucky Brand Men's Boxers Package (Blue)
	28				LB1921 - Lucky Brand Women's Boxers Package (Lilac)
	29				LB1620 - Lucky Brand Women's Boxers Package (Celadon)
	30				LB1625 - Lucky Brand Foundation Raffia Shopping Bag
	31				LB1622 - Lucky Brand Glossy Paper Color Shopping Bag
	32				LB1623-24 - Lucky Brand Plastic Shopping Bag
	33				LB1537-81 - Lucky Brand Women's 2003 Line Book
	34				LB1506-36 - Lucky Brand Men's 2003 Line Book
	35				LB1582-1616 - Lucky Brand Internet Web Pages - 2003
	36				LIZ00008 - Lucky Brand Fragrance "Coffee" Advertisement
	37				LIZ00009 - Lucky Brand Fragrance "Jukebox" Advertisement
	38				LIZ00010 - Lucky Brand Fragrance "Ice Cream Sundae" Advertisement
	39				LIZ00011-12 - Lucky Brand Fragrance Scent Strip Magazine Insert - "Coffee"
	40				LIZ00013-14 - Lucky Brand Fragrance Scent Strip Magazine Insert - "Ice Cream Sundae"
	41				LIZ00019-20 - Lucky Brand Fragrance Scent Strip Magazine Insert - "Jukebox"
	42				LIZ00023-25 - Lucky Brand Fragrance Store Credit Card Bill Insert - "Coffee"
	43				LIZ00028-30 - Lucky Brand Fragrance Store Credit Card Bill Insert - "Ice Cream Sundae"

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**LIST OF DEFENDANTS' PROPOSED TRIAL EXHIBITS**

PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*
	44				LIZ00050-53 - Lucky Brand Fragrance Store Credit Card Bill Insert - "Jukebox"
	45				LIZ00054-58 - Lucky Brand Fragrance Dormitory Door Hanger - Girl
	46				LIZ00059-62 - Lucky Brand Fragrance Dormitory Door Hanger - Boy
	47				LIZ00065 - Transcript of Lucky Brand Fragrance "Mr. Lucky Magic" Radio Advertisement
	48				LIZ00067 - Transcript of Lucky Brand Fragrance "Lucky Laredo" Radio Advertisement
	49				LIZ00079-80 - Barney's "Get Lucky" Advertisement in Time Out New York Magazine
	50				LIZ00081 - Barney's "Get Lucky" Advertisement in the New York Times
	51				LIZ00082 - Bugle Boy "Get Lucky" Advertisement in DNR
	52				Men's LUCKY YOU LUCKY ME Fragrance Bottle
	53				Women's LUCKY YOU LUCKY ME Fragrance Bottle
	54				Compilation of Press Coverage of Lucky Brand Dungarees, Inc. (Ex. A to Merrill Dec. of 1/31/02)
	55				P-0032-0033 - Marcel Fashions Collection 2001 Brochure
	56				P-0034-0040 - October 2001 Bradenton/Manatee Trade Show Brochure
	57				P-0041-0045 - Lifestyle Trends Trade Show Brochure
	58				P-0046-0053 - October 18-22, 2001 Americas Mart Trade Show Brochure
	59				P-0746 - 1/31/89 Marcel Fashions, Inc. Invoice
	60				P-1642 - 2/11/98 Marcel Fashions, Inc. Invoice
	61				Get Lucky Red Heart T-Shirt

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**LIST OF DEFENDANTS' PROPOSED TRIAL EXHIBITS**

PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*
	62				Get Lucky Denim Shirt with Cowboy Embroidery
	63				Get Lucky "Las Vegas" T-Shirt
	64				Final Report of Weston Anson (1/13/03)
	65				LB1431-1504 - License Agreement between Lucky Brand Dungarees, Inc. and Briefly Stated, Inc.
	66				Sales, Cost and Profit Analysis re Lucky Brand Underwear (Ref. Exs. 20 and 21)
	67				Sales, Cost and Profit Analysis re Group of Lucky Brand Logo T-Shirts
	68				Complaint - <u>Marcel Fashion Group, Inc. v. Lucky Brand Dungarees, Inc., et al.</u> , S.D. Fla., Case No. 01-7495.
	69				Defendants' Answer and Affirmative Defenses
	70				Complaint - <u>Marcel Fashion Group, Inc. v. Liz Claiborne, Inc.</u> , S.D. Fla., Case No. 02-21304.
	71				Liz Claiborne's Corrected Answer and Affirmative Defenses.
	72				Defendants' First Interrogatories to Plaintiff
	73				Plaintiff's Responses to Defendants' First Interrogatories
	74				Plaintiff's Better Responses to Defendants' Interrogatories 15 and 16.
	75				Defendant Liz Claiborne's First Set of Interrogatories to Plaintiff.
	76				Plaintiff's Responses to Defendant Liz Claiborne's First Set of Interrogatories.

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CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

**EXHIBIT C**

**Marcel Fashion Group, Inc.'s Trial Witness List**

1. Ezra Mizrachi  
394 NW 24<sup>th</sup> Street  
Miami, Florida
2. Jackie Goldberg  
110 E. 9<sup>th</sup> St., Suite B 332  
Los Angeles, California
3. Donna Skinner  
7220 NW 36<sup>th</sup> Street  
Suite 309  
Miami, Florida
4. Sushil Tolani  
Miami, Florida
5. Richard Lazarus  
Miami, Florida
6. All witnesses referenced in Defendants Trial Witness List
7. Trent Merrill  
5233 Alcoa Avenue  
Vernon, CA
8. Barry Perlman  
5233 Alcoa Avenue  
Vernon, CA
9. Jason Johnson  
5233 Alcoa Avenue  
Vernon, CA
10. Karen Schneider  
1950 Sawtelle Blvd.  
Suite 325, Los Angeles, CA
11. Weston Anson, expert witness
12. Greg Battersby  
488 main Avenue  
3<sup>rd</sup> Floor, Norwalk, CT  
expert witness

CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

13. Robin Lewis  
220 east 54<sup>th</sup> St.  
New York, NY  
expert witness
14. Any witnesses called by Defendants

CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

**EXHIBIT D**

**Defendants' Trial Witness List**

**(Pursuant to S.D. Fla. L.R. 16.1.E.10.)**

The following are the witnesses Defendants expect to call to testify at the trial of this matter, except those who may be called for impeachment purposes:

1. Trent Merrill  
Lucky Brand Dungarees, Inc.  
5233 Alcoa Avenue  
Vernon, California 90058
2. Barry Perlman  
Lucky Brand Dungarees, Inc.  
5233 Alcoa Avenue  
Vernon, California 90058
3. Jason Johnson  
Lucky Brand Dungarees, Inc.  
5233 Alcoa Avenue  
Vernon, California 90058
4. Karen Schneider  
Schneider/Newman/Levine Communications  
1950 Sawtelle Blvd.  
Suite 325  
Los Angeles, CA 90025
5. Margo Sokol  
Liz Claiborne, Inc.  
1441 Broadway  
New York, NY 10018
6. Robin Lewis (**Expert Witness**)  
Robin Lewis Inc.  
220 East 54<sup>th</sup> Street  
Suite 1E  
New York, NY 10022
7. Gregory J. Battersby, Esq. (**Expert Witness**)  
Grimes & Battersby L.L.P  
488 Main Avenue  
Third Floor  
Norwalk, CT 06851-1008

CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

8. Sandra Ruiz **(by deposition)**  
2548 Cherrywood Street  
Henderson, NV 89108
9. Darrell Seagraves **(by deposition)**  
1244 Diamond Valley Street  
Henderson, NV 89502
10. Joseph Federici **(by deposition)**  
1933 Summer Spruce Place, No. 103  
Las Vegas, NV 89134
11. Viviana Strahl-Dickieson **(by deposition)**  
2780 Glen Port  
Las Vegas, NV 89135
12. Dawn Okarma **(by deposition)**  
4316 East Tropicana, No. 99  
Las Vegas, NV 89121
13. Maryann Brelet **(by deposition)**  
423 East New York Avenue  
Las Vegas, NV 89104

In addition to the witnesses identified above, Defendants may call the following witnesses at the trial of this matter if the need arises:

14. Bridget Belden  
Lucky Brand Dungarees, Inc.  
5233 Alcoa Avenue  
Vernon, California 90058
15. Liz Munoz  
Lucky Brand Dungarees, Inc.  
5233 Alcoa Avenue  
Vernon, California 90058
16. Judy Greenbaum  
Liz Claiborne, Inc.  
1441 Broadway  
New York, NY 10018
17. Ira B. Blum  
Tupelo Honey, Inc.  
3585 N.E. 207<sup>th</sup> Street  
Aventura, FL 33180

CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

18. Ezra Mizrachi  
Marcel Fashion Group, Inc.  
394 NW 24<sup>th</sup> Street  
Miami, FL 33127

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CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

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Miami, Florida
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CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

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CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

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Schneider/Newman/Levine Communications  
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Suite 325  
Los Angeles, CA 90025
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CASE NO. 01-7495-CIV-DIMITROULEAS/SELTZER

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